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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1963

Nos. 71 and 73

FEDERAL POWER COMMISSION, *Petitioner*,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY and PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Respondents*.

CITY OF COLTON, CALIFORNIA, *Petitioner*,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY and PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Respondents*.

OPPOSITION BY SOUTHERN CALIFORNIA EDISON COMPANY TO MOTION OF AMERICAN PUBLIC POWER ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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Southern California Edison Company (referred to herein as Edison) opposes the motion of American Public

Power Association (referred to as Association herein) to file a brief as amicus curiae.

The Association admits that the Federal Power Commission had not yet filed a brief on August 30, 1963 at the time when the motion was submitted to this Court, and it proceeds to suggest that the Federal Power Commission will fail to present a particular argument, viz., "that the Court of Appeals decision is inconsistent with the intent of Congress . . .". Upon the face of it it seems wholly unwarranted for the Association to contend that the Federal Power Commission will not deal in its brief with the question of the intent of Congress in enacting Section 201 (b) of the Federal Power Act. Furthermore, the brief of the Federal Power Commission *was* filed on September 3, 1963, and is now available for inspection. That brief, as one would expect, devotes a major part of its attention to the question of congressional intent. There is no information on that subject available to the Association which is not available to the Federal Government and more particularly to the Federal Power Commission.

As if to embellish and strengthen its position the Association refers to Congress's intent, expounded by the Ninth Circuit, as leaving "perilous confusion and gaps in the regulation of the rates of wholesale sales to literally hundreds of publicly-owned electric utilities throughout the country." Far from creating perilous confusion and gaps, the decision of the Ninth Circuit defines precisely the jurisdiction of the Federal and the State agencies in the case of wholesale sales to publicly-owned electric utilities, and no gap is left for confusion or peril.

An additional important reason for opposition to the Association's motion is that the Association fails to indicate any authorization by its membership to participate in these proceedings or to seek reversal of the decision below. Indeed, Edison is informed and believes that a number of members of the Association strongly oppose the position asserted in the motion now before the Court and that such members would not, if requested, authorize such filing.

Under the circumstances Edison submits that no purpose would be served in permitting the Association to file a brief as amicus curiae.

Respectfully submitted,

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Dated: September 13, 1963